

STATE OF WISCONSIN

CIRCUIT COURT

WALWORTH COUNTY

JAMES H. HAMPEL,
KIM C. HAMPEL-SCHAEFER,
DAVID M. WARDIN
and RHONDA A. WARDIN,

Plaintiffs,

vs.

Case No. 03-CV-00603

TOWN OF EAST TROY,

Defendant.

AFFIDAVIT OF J. BUSHNELL NIELSEN

State of Wisconsin)
: SS
Waukesha County)

J. Bushnell Nielsen, being first duly sworn under oath, deposes and states as follows:

1. This Affidavit is based upon my personal knowledge of the facts set forth below.
2. From 1981 to 1990, I served as counsel to Ticor Title Insurance Company in several capacities, including as state counsel.
3. From 1990 to 1993, I litigated title disputes in private practice.

4. From 1993 to 2000, I served as underwriting counsel for Chicago Title Insurance Company, and in 1995 became the senior Wisconsin underwriter for that company.

5. Since 2000, I have been in private practice in the Milwaukee area, litigating title disputes and serving as an expert witness in title-related issues.

6. I have searched and examined title to thousands of properties during the past 23 years, have taught scores of seminars to title company employees and others regarding the proper method of searching and examining title to real estate, and have written extensively on the subject.

7. I am the current President of the Wisconsin Land Title Association, the state association of title insurers, title abstractors and agents. My resume is attached hereto.

8. I have examined the subdivision plat of Beulah Lake Farms; the subdivision plat of Beulah Lake Farms Subdivision Addition # 1, filed on April 12, 1999 as document no. 412825; the Amended Declaration for Covenants, Conditions and Restrictions for Beulah Lake Farms Subdivision, recorded on April 10, 1996 as document no. 326791; the Second Amended Declaration for Covenants, Conditions and Restrictions for Beulah Lake Farms Subdivision, recorded on March 22, 2002 as document no. 504674; the warranty deed from Rural Community Development to James H. Hampel and Kim C. Hampel-Schaefer, dated April 30, 1999; the warranty deed from Rural Community

Development to David M. Wardin and Rhonda A. Wardin recorded on July 23, 1999 as document no. 422516; various other conveyances of lots in Beulah Lake Farms and Beulah Lake Farms Subdivision Addition #1; and the Beulah Lake Farms Resolution to Formally Dedicate the Recreational Easement Benefitting the Subdivision and Town of East Troy for Improvement, dated April 12, 1999.

HAMPEL LOT AND 1996 RESTRICTIONS

9. Beulah Lake Farms Subdivision Addition #1 is composed of lots 22 through 33 of Beulah Lake Farms and additional previously-unplatted land.

10. The Hampels purchased Lot 43 of Addition #1, which was not a part of the Beulah Lake Farms subdivision.

11. The 1996 Amended Restrictions encumber and restrict only the property within Beulah Lake Farms Subdivision.

12. It is my opinion that the 1996 Amended Restrictions do not encumber the Hampel parcel, Lot 43, and that those restrictions do not impart constructive notice to a purchaser of Lot 43 such as the Hampels.

SECOND AMENDED RESTRICTIONS

13. The Second Amended Restrictions were recorded in 2002, more than three years after the Hampels and Wardins purchased, and purport to encumber the Hampel and Wardin lots.

14. The Second Amended Restrictions are signed only by Robert H. Diamond, Sr., in the claimed capacity of chairman of the board of directors of Beulah Lake Farms Subdivision, Inc.

15. The Second Amended Restrictions are posted in the Walworth County register of deeds' grantor-grantee index under the grantor name of Beulah Lake Farms Subdivision, Inc.

16. Beulah Lake Farms Subdivision, Inc. has never been the record owner of any of the lots in either of the Beulah Lake Farms subdivisions.

17. In examining the title to the Hampel or Wardin lots in the grantor-grantee index, a title searcher would search under the name Hampel or Wardin from 1999 forward. The Second Amended Restrictions, posted in the index under "B" for Beulah Lake Farms Subdivision, Inc., would not appear in the chain of title.

18. In my opinion, a purchaser or lender for the Hampel or Wardin lots would have no constructive notice of the Second Amended Restrictions, and thus would take free of the effect, if any, of those restrictions.

19. It is also my opinion, based on my examination of title and experience as a title examiner, that the Second Amended Restrictions do not validly encumber any of the other lots sold by Rural Community Development prior to the signing of the restrictions on February 17, 2002.

20. On March 14, 2004, I personally searched the Wisconsin Department of Financial Institutions Corporate Registration Information System website for the name Beulah Lake Farms Subdivision, Inc., and found that no such corporation is listed as having ever existed.

21. The Second Amended Restrictions state that "the Board of Directors has been delegated the authority, to act on behalf of the Beulah Lake Farms Homeowners Association, subject to restrictions to vote by the Association as a whole..." However, the Second Amended Restrictions also state that Beulah Lake Farms Homeowners Association, Inc. has not yet been incorporated.

22. The restrictions nowhere identify the means by which the not-yet-formed corporation could "delegate" authority to the board of directors of a non-existent corporation for the encumbering of real estate not owned by either corporation. It is my opinion that the restrictions are invalid because the "delegating" corporation was not able to act because it had not been formed, had no authority to assign an easement over land it did not own, that one corporation may not "delegate" authority to another corporation, and that the non-existent corporation to whom the authority was to be delegated had no capacity to act because it has never been formed.

23. It is my opinion, based on my examination of title and experience as a title examiner, that the only persons entitled to encumber the title to property with use restrictions are the owners of the property, and that the Second Amended

Restrictions are void and unenforceable because they are not signed or consented to by any of the rightful owners of the described parcels.

24. Based on the above opinions, it is my further opinion that, if a title searcher discovered the Second Amended Restrictions at all, he or she would properly ignore them in preparing an abstract of title or title insurance commitment, because they are not in the chain of title and are not executed by the owners of the described real estate.

"DEDICATION" OF EASEMENT TO PUBLIC

25. Article IV of the 1996 Beulah Lake Restrictions creates an "easement of enjoyment" for horseback riding, walking, bicycling and golf carts along certain trails designated on the subdivision plat. The easement "shall pass with the title to every Lot." The subdivision plat states that the paths "shall be for the use of the public utility companies and the subdivision home owners association."

26. Section 7 of Article IV states that the "Declarant" reserves the right "to transfer the easements leading to and from the Town Park ... " That section does not explain to whom the easements held by the lot owners may be "transferred." The identity of the "Declarant" is not disclosed by the restrictions.

27. A "resolution" was purportedly executed on April 12, 1999 by Robert H. Diamond as "Representative and Director of Developer, Rural Community Development and Director of Beulah Lake Farms Homeowner's

Association, Inc." By that "resolution," the board of directors of Beulah Lake Farms Homeowner's Association purported to declare that the "recreational easement shall hereafter be dedicated as a limited public recreational easement to and from the Town Park." The resolution does not identify the members of the board of directors, or describe the meeting of the board at which this purported resolution was adopted.

28. As noted above, my search of the Wisconsin Department of Financial Institutions Corporate Registration Information System website for the name Beulah Lake Farms Homeowner's Association, Inc. disclosed that no such corporation has ever existed. A Beulah Lake Farms Property Owner's Association, Inc. was incorporated with an effective date of December 15, 1999. However, that incorporation took place approximately eight months after the "resolution" was purportedly signed.

29. It is my opinion that the resolution is not a conveyance of real estate under the Statute of Frauds, codified as § 706.02, Wis. Stats., and did not convey any easement right, because of the following: it contains no language of conveyance, fails to describe the land to be conveyed, does not unambiguously identify the grantee, is not signed by the owner of the land, is signed by a director of a corporation that did not exist on the purported execution date, and is not notarized.

30. It is my opinion that the trail easement is an easement appurtenant to the Beulah Lake Farms subdivision lots. The custom and practice in the land title industry is that appurtenant easements, as distinguished from easements in gross, are not assignable because they run with the land they benefit. An easement in gross, by contrast, is assignable because it is for the benefit of a party such as a utility that has no other land with which the easement runs. Therefore, it is my opinion that I would be unwilling to insure the assignment of the trail easement to the Town of East Troy, because it is an invalid assignment of an appurtenant easement.

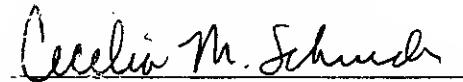
31. The "resolution" is not recorded in the office of the register of deeds. Therefore, it is my opinion that it did not impart constructive notice to the Hampels or the Wardins, who purchased shortly after the resolution was allegedly signed.

32. It is my further opinion that the only beneficiaries of the recreation path easement are the Beulah Lake Farms lot owners; therefore, by "dedicating" the easement to the use of the public, for access to a town park, the resolution purported to grant rights that are inconsistent with the nature of the easement previously granted to the lot owners, and the grant is invalid for this further reason.

Dated this 19th day of March, 2004.


J. Bushnell Nielsen

Subscribed and sworn before me
this 19th day of March, 2004.



Notary Public, State of Wisconsin
My Commission 5/29/05

WAUK\15202

**BEULAH LAKE FARMS RESOLUTION TO FORMALLY DEDICATE
THE RECREATIONAL EASEMENT BENEFITTING THE SUBDIVISION
AND TOWN OF EAST TROY FOR IMPROVEMENT**

Whereas, Beulah Lake Farms Subdivision has filed an amended subdivision plat affecting lots 37 through 50 of Beulah Lake Farms Subdivision which includes a recreational easement to and from a prior dedication to the Town of East Troy for Town park purposes; and

Whereas, the Covenants for such subdivision call for an offer of dedication to the Town to permit the Town to improve such areas, maintain the same and take all responsibility for the same, subject to limitations contained in such Protective Covenants, including, but not limited to a prohibition against motorized vehicles, public access during non-daylight hours and other restrictions of record; and

Whereas, the Town of East Troy has accepted such offer and is pursuing funds for improving the same, and is in agreement to permitting public access to such recreational easements subject to the recorded restrictions of record regarding such usage and to improve, maintain and take all responsibility for, including suitable posting thereof regarding usage regulations, over such recreational easement;

Now, Therefore, the Board of Directors of the Beulah Lake Farm Homeowner's Association do hereby resolve as follows:

1. That said recreational easement shall hereafter be dedicated as a limited public recreational easement to and from the Town Park.
2. That the same is conditioned upon the Town of East Troy improving the same by way of a jogging, hiking or bicycle trail through the subdivision and other lands adjacent to and affected thereby, and shall hold the Homeowner's Association harmless from any claims relating

thereto.

3. That all restrictions of record that apply to such recreational easement shall be imposed by, enforced by and published by posting of such regulations at suitable places which access the subdivision.
4. That this dedication shall not limit in any way the benefits to the subdivision or property owners of record that are recorded heretofore, including full access to such recreational

easement at any time by property owners and the ability to use such recreational easement for golf cart purposes for lot owners in the subdivision.

Dated this 12th day of April, 1999.



Robert H. Diamond, Authorized Representative and
Director of Developer, Rural Community
Development and Director of Beulah Lake
Farms Homeowner's Association, Inc.

Attest:

The foregoing resolution was duly made and adopted at a meeting of the representatives of the Developer that constitute the body authorized under the Protective Covenants and Homeowners Association to duly enact the same.

Dated this 12th day of April, 1999.



Patrick J. Hudlec, Secretary
Beulah Lake Farms Homeowner's Association

STATE OF WISCONSIN: CIRCUIT COURT: WALWORTH COUNTY:

JAMES H. HAMPEL and KIM C.
HAMPEL-SCHAEFER, husband
and wife, and DAVID M.
WARDIN, and RHONDA A.
WARDIN, husband and wife,

File No. 03-CV-00603

ORDER FOR TEMPORARY
INJUNCTION

Plaintiffs,
-vs-

Case Classification Type:
Declaratory Judgment

TOWN OF EAST TROY, a
municipal corporation,

Code No. 30701

CIRCUIT COURT
JUN 22 2004

By Clerk of Circuit Court, Walworth Co.
J. L. Carlson, Deputy Clerk

Defendant.

The Plaintiffs, James H. Hampel, Kim C. Hampel,
Schaefer (collectively, "Hampels"), David M. Wardin, and
Rhonda A. Wardin (collectively, "Wardins"), (Hampels and
Wardins, collectively, "Plaintiffs"), having filed and served
a motion for a temporary injunction, and the same having come
on for a hearing, on May 10, 2004 at 10:00 a.m., and June 7,
2004, at 9:00 a.m., the Honorable James L. Carlson, Walworth
County Circuit Court Judge, presiding, and the Plaintiffs, the
Wardins, having appeared in person and all Plaintiffs having
appeared by their attorney, Anthony A. Coletti, of Godfrey,
Leibsle, Blackbourn & Howarth, S.C., and the Defendant, Town
of East Troy ("Town"), having appeared by its attorney, Agatha
Kresa, of Crivello, Carlson & Mentkowski; and

The Court having read and considered the submissions
of the parties, the oral arguments of counsel, and the Court's
file, and being fully advised in the premises;

EXHIBIT 6

IT IS HEREBY ORDERED:

1. That, pursuant to Wis. Stat. §§ 840.03(1)(L) - (n) and 844.01(1), the Town is hereby prohibited from entering upon Lot 43 of Beulah Lake Farms Subdivision Addition No. 1, which is owned by the Hampels, for purposes of constructing or improving a public recreational trail.

2. That, pursuant to Wis. Stat. §§ 840.03(1)(L) - (n) and 844.01(1), the Town is hereby prohibited from entering upon Lot 50 of Beulah Lake Farms Subdivision Addition No. 1, which is owned by the Wardins, for purposes of constructing or improving a public recreational trail.

3. That, pursuant to Wis. Stat. §§ 840.03(1)(L) - (n) and 844.01(1), the Town is hereby prohibited from opening a public recreational trail within the bounds of Beulah Lake Farms subdivision Addition No. ~~1~~ *Stipulation & Order dated 9/25/03 remains in effect pending further order of the Court*

4. That this Order shall be effective immediately, and shall remain in effect until further order of the Court.

Dated this 22nd day of June, 2004.

BY THE COURT:


Honorable James L. Carlson
Circuit Court Judge
Walworth County, Wisconsin

Anthony A. Coletti
GODFREY, LEIBSLE, BLACKBOURN &
HOWARTH, S.C.
11 North Wisconsin Street
Post Office Box 260
Elkhorn, Wisconsin 53121
Telephone: (262) 723-3220
Facsimile: (262) 723-5091
e-mail: acoletti@godfreylaw.com
T:\H\Hampel\Litigation\offcopy\2004\temporary restraining order.wpd

RELEASE AND
SETTLEMENT AGREEMENT

Document Number

Document Name

THIS RELEASE AND SETTLEMENT AGREEMENT ("RELEASE AND SETTLEMENT AGREEMENT") is entered into on the date set forth below by and among James Hampel and Kim Hampel-Schaefer, David Wardin and Rhonda Wardin, and the Town of East Troy.

DEFINITIONS

"Town" means the Town of East Troy.

"Hampel" means James Hampel and Kim Hampel-Schaefer.

"Wardin" means David Wardin and Rhonda Wardin.

"Hudec" means Patrick Hudec.

"Diamond" means Robert Diamond, Sr.

"RCD" means Rural Community Development, a Wisconsin general partnership.

"Lot 43" means Lot 43 of Beulah Lake Farms Subdivision Addition No. 1, being a recorded subdivision located in the SW 1/4 of the NE 1/4 and part of the NW 1/4 of the SE 1/4 of Section 3, Township 4 North, Range 18 East, in the Town of East Troy, Walworth County Wisconsin.

"Lot 50" means Lot 50 of Beulah Lake Farms Subdivision Addition No. 1, being a recorded subdivision located in the SW 1/4 of the NE 1/4 and part of the NW 1/4 of the SE 1/4 of Section 3, Township 4 North, Range 18 East, in the Town of East Troy, Walworth County Wisconsin.

"Addition No. 1" means the entirety of Beulah Lake Farms Subdivision Addition No. 1, being a recorded subdivision located in the SW 1/4 of the NE 1/4 and part of the NW 1/4 of the SE 1/4 of Section 3, Township 4 North, Range 18 East, in the Town of East Troy, Walworth County Wisconsin.

"Member of the General Public" means any person or entity who is not an owner of a lot located in Addition No. 1, or who is not the guest, invitee, or licensee of an owner of a lot located in Addition No. 1.

Recording Area

Name and Return Address
Anthony A. Coletti
GODFREY, LEIBESLE, BLACKBOURN &
HOWARTH, S.C.
354 Seymour Court
Elkhorn, Wisconsin 53121

PBFL 00007 and PBFL 00014
Parcel Identification Number (PIN)

This is homestead property.

EXHIBIT 10

"Public Recreational Easement" means an easement, license, right-of-way, or other property interest, including fee simple, which is used or intended for use by Member(s) of the General Public for any recreational purpose, including, but not limited to, parks, walking (or running) trails or paths, bicycle trails, nature preserves, roadways, paths or trails for go-karts, ATVs, golf carts, or other motorized vehicles, or athletic fields.

"Public Recreational Trail" means the gravel path now existent upon Lots 43 and 50 and within the bounds of Addition No. 1 which was constructed by the Town for purposes of its use by Members of the General Public for recreational purposes.

RECITALS

WHEREAS, the Town has claimed a Public Recreational Easement over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally; and

WHEREAS, Hampel and Wardin have contested the Town's entitlement to a Public Recreational Easement over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally, and, to that end, have commenced a civil action seeking injunctive relief to halt the completion and opening of the Public Recreational Trail over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally, to-wit, Walworth County Circuit Court Case No. 03-CV-00603 (Hampel, et al. v. Town of East Troy, et al.) ("Case No. 03-CV-00603"); and

WHEREAS, it is the intent of the Town to cease all past and present efforts to construct, complete, and/or open the Public Recreational Trail over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally, and to close those portions of the Public Recreational Trail within the bounds of Addition No. 1 which are now in existence; and

WHEREAS, nothing in this Release and Settlement Agreement shall be construed to preclude the Town from constructing and/or developing a public recreational trail in the future should the Town acquire such a property interest by gift, sale, condemnation proceedings, or other lawful means, except as otherwise restricted by the terms of this Release and Settlement Agreement; and

WHEREAS, Hampel, Wardin, and the Town have, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, reached a mutually satisfactory settlement of all claims and causes of action against each other which arise from the Town's assertion of a Public Recreational Easement over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally; and

WHEREAS, it is the specific intent of Hampel and Wardin to preserve, and not release, any and all claims or causes of action that they have or may have, whether asserted to date or not, against Hudec, Diamond, and RCD arising from the Town's efforts to complete and/or open the Public Recreational Trail over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally, or the Town's assertion of rights to a Public Recreational Easement, over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally, including those claims currently pending against Hudec, Diamond, and RCD in Case No. 03-CV-603;

NOW THEREFORE, Hampel, Wardin, and the Town hereby agree that:

RELEASE

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town releases, renounces, and disclaims any and all past or present right, claim, title, or interest it had, has, or may have had in and/or to a Public Recreational Easement over, upon, or across Lots 43 and 50, specifically, and/or within the bounds of Addition No. 1, generally.

While specifically intending that the following enumeration shall not in any way limit the broad, general nature of the Release set forth hereinabove, in making the foregoing Release the Town hereby forever releases, renounces, and foregoes any and all claims, past, present, or future, to a Public Recreational Easement over Lots 43 or 50, specifically, or within the bounds of Addition No. 1, generally, based upon any of the terms, conditions, or provisions of any of the following documents:

1. The Plat of Beulah Lake Farms Subdivision, a recorded subdivision, recorded in the Office of the Register of Deeds for Walworth County, in Cabinet B of Plats, at Slides 145 to 147, inclusive, as

Document No. 290417, on August 4,
1994.

2. The Plat of Beulah Lake Farms Subdivision Addition No. 1, a recorded subdivision, recorded in the Office of the Register of Deeds for Walworth County, in Cabinet C of Plats, at Slides 21(A) to 21(C), inclusive, as Document No. 412825, on April 12, 1994.
3. The Declaration for Covenants, Conditions and Restrictions for Beulah Lake Farms Subdivision (unrecorded), dated May 4, 1993.
4. The Amended Declaration for Covenants, Conditions and Restrictions for Beulah Lake Farms Subdivision, recorded in the Office of the Register of Deeds for Walworth County, in Volume 640 at Pages 2237 to 2272, inclusive, as Document No. 326791, on April 19, 1996.
5. The Second Amended Declaration for Covenants, Conditions and Restrictions for Beulah Lake Farms Subdivision, recorded in the Office of the Register of Deeds for Walworth County, as Document No. 0504674, on March 22, 2002.
6. The Beulah Lake Farms Resolution to Formally Dedicate the Recreational Easement Benefitting the Subdivision and Town of East Troy for Improvement (unrecorded), dated April 12, 1999.

The Town further renounces and releases any and all past, present or future claims to a Public Recreational Easement over, upon, or across Lots 43 and 50, specifically, and/or within the bounds of Addition No. 1, generally, based upon any representations, agreements, or contracts, whether oral or written, by or with any of the following persons or entities:

- a. Robert Diamond, Sr.;
- b. Robert Diamond, Jr.;
- c. Patrick Hudec;

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- d. Any partner, general or limited, employee, agent, or authorized representatives of Rural Community Development;
- e. Any partner or employee of Hudec Law Offices, S.C.; and
- f. Any officer, director, or other duly authorized representative of Beulah Lake Farms Property Owner's Association, Inc. (or any other homeowners' association comprised of some or all of the owners of lots in Addition No. 1).

The Town further agrees that those persons or entities set forth hereinabove did not have and do not have authority to convey any form of a Public Recreational Easement to the Town.

SETTLEMENT AGREEMENT

For valuable consideration, the receipt and sufficiency of which is acknowledged, the Town also agrees to the following terms, conditions, and provisions:

1. Within 30 days of the execution of this Release and Settlement Agreement, the Town will amend and/or withdraw all portions of pending DNR Grant Applications for construction of a public recreational trail within the bounds of Addition No. 1.

2. Within 45 days of the execution of this Release and Settlement Agreement, the Town will rescind all resolutions, ordinances, or motions which authorized the construction or opening of the Public Recreational Trail within the bounds of Addition No. 1, or amend said resolutions, ordinances, or motions so as to effect that intent, and/or rescind any resolutions, ordinances, or motions which allocated monies for the construction or operation of the Public Recreational Trail, or reallocate all monies authorized for expenditure for the Public Recreational Trail.

3. Within 30 days of the execution of this Release and Settlement Agreement, the Town will restore Lot 43 to its preconstruction state, which shall entail the planting of not less than six oak/maple trees within the bounds of the asserted Public Recreational Easement, the removal of all gravel or stone which remains within the bounds of the asserted Public Recreational Easement

upon Lot 43, and the planting of seed or sod upon those areas which were disturbed by the Town's construction activities and/or which were covered with deposits of gravel by the Town pursuant to its efforts to construct the Public Recreational Trail.

4. Within 30 days of the execution of this Release and Settlement Agreement, the Town will place barricades across all entrances to the Public Recreational Trail, post "Trail Closed" signs at all entrances to the existing Public Recreational Trail, and remove any and all signage which suggests in any way that a public recreational trail validly exists over, upon, or across Lots 43 and 50 or within the bounds of Addition No. 1.

5. Within 30 days of the execution of this Release and Settlement Agreement, the Town will pay the sum of One Thousand One Hundred Twenty-five Dollars (\$1,125.00), to Hampel and Wardin. The payment shall be made by check to the Trust Account of Godfrey, Leibslle, Blackbourn & Howarth, S.C.

6. Within 14 days of completion of the terms of this Release and Settlement Agreement, Hampel and Wardin will execute the Release attached hereto as Exhibit A.

7. Within 14 days of completion of the terms of this Release and Settlement Agreement, the parties hereto shall stipulate to the dismissal of all claims, causes of action, and defenses asserted against each other in Case No. 03-CV-00603, with prejudice and without costs to any party.

8. It is specifically agreed that Hampel and Wardin retain, and do not release, any and all claims or causes of action they have or may have, whether asserted to date or not, against Hudec, Diamond, or RCD which relate in any way to the Town's efforts to complete and open the Public Recreational Trail over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally, or from the Town's assertion of a claim to a Public Recreational Easement over, upon, and across Lots 43 and 50, specifically, and within the bounds of Addition No. 1, generally. It is specifically agreed that this Release and Settlement Agreement shall in no way compromise, reduce, or release any of the claims presently pending against Hudec, Diamond, and RCD in Case No. 03-CV-603.

9. Acknowledgment of Mutual Drafting. The parties acknowledge that they, through counsel, have had a fair opportunity to make modifications to this Release

and Settlement Agreement and, therefore, this Release and Settlement Agreement shall not be construed against one party as drafter.

MISCELLANEOUS PROVISIONS

10. Attorney Fees. The parties agree that if suit be commenced to enforce any of the provisions of this Release and Settlement Agreement, the prevailing party in said suit shall be entitled to recover reasonable attorney fees and costs as set by a court of competent jurisdiction.

11. Binding Effect. This Release and Settlement Agreement shall be binding upon and shall inure to the heirs, successors, assigns, legal representatives, and personal representatives of the parties hereto.

12. Counterparts. This Release and Settlement Agreement, and all other documents or instruments that may be required by this Release and Settlement Agreement, may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, all such documents may contain more than one counterpart of the signature page, and may be executed by attaching the signatures of each of the signers to one of such counterpart signature pages; all of such counterpart signature pages shall be read as though one, and shall have the same force and effect as though all of the signers had signed a single signature page.

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350 13. Nothing in this Release and Settlement
351 Agreement shall be construed to affect recorded public
352 utility easements within the bounds of Addition No. 1.
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IN WITNESS WHEREOF, the parties have executed
this Release and Settlement Agreement this ____ day of
May, 2005.

Dated this 20th day of May, 2005.

James Hampel
James Hampel

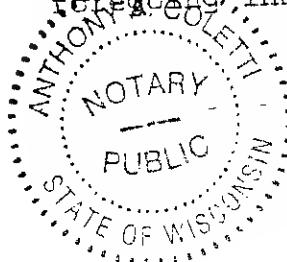
James Hampel

James Hampel
Kim Hampel-Schaefer
Kim Hampel-Schaefer

Kim Hampel-Schaefer

STATE OF WISCONSIN)
COUNTY OF Waukesha)
ss.

Personally came before me this 25th day of May, 2005, the above-named James Hampel and Kim Hampel-Schaefer, to me known to be the persons who executed the foregoing instrument and acknowledged the same.



Notary Public, Walworth County, WI
My Commission Expires: permanent

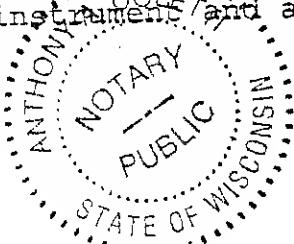
Dated this 19th day of May, 2005.

David Wardin
David Wardin

Rhonda Wardin
Rhonda Wardin

STATE OF WISCONSIN)
) ss.
COUNTY OF Waukesha)

Personally came before me this 19th day of May, 2005, the above-named David Wardin and Rhonda Wardin, to me known to be the persons who executed the foregoing instrument and acknowledged the same.



Notary Public, Waukesha County, WI
My Commission Expires: 15 permanent.

TOWN OF EAST TROY

By:

Robert R. Mueller, Chairman

Attest:

Kim Buchanan, Clerk

STATE OF WISCONSIN)
COUNTY OF WALWORTH)

Personally came before me this 12th day of May, 2005, the above-named Robert R. Mueller and Kimberly Buchanan, Chairman and Clerk, respectively, of the Town of East Troy, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

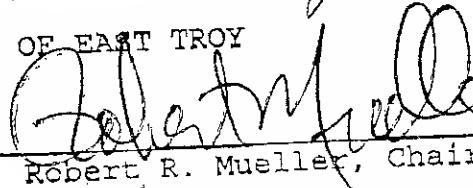
Notary Public, Walworth County, WI
My commission expires: permanent

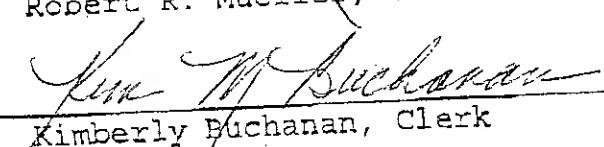
RESOLUTION

BE IT RESOLVED that the foregoing Release and Settlement Agreement has been approved by the Town of East Troy as required by law.

Dated this 12 day of May, 2005.

TOWN OF EAST TROY

By: 
Robert R. Mueller, Chairman

Attest: 
Kimberly Buchanan, Clerk

This instrument was drafted by:

Anthony A. Coletti, Esq.
GODFREY, LEIBSLE, BLACKBOURN &
HOWARTH, S.C.
354 Seymour Court
Elkhorn, Wisconsin 53121
Telephone: (262) 723-3220
Facsimile: (262) 723-5121
e-mail: acoletti@godfreylaw.com

JHY-147-2000 14-40

EXHIBIT A

RELEASE

See attached.

RELEASE OF CLAIMS

For good and valuable consideration, the receipt of which is hereby acknowledged, JAMES H. HAMPEL and KIM C. HAMPEL-SCHAEFER (hereinafter referred to as "the Hampels") and DAVID M. WARDIN and RHONDA A. WARDIN (hereinafter referred to as "the Wardins"), do hereby release and discharge the TOWN OF EAST TROY (hereinafter referred to as "the Released Party") from any and all claims and causes of action that they have, or may have, in any way arising out of or related to incidents more particularly described in State of Wisconsin, Walworth County Circuit Court Case Number 03-CV-00603 (collectively, "Claims").

This Release by the Hampels and the Wardins is also made for and binding upon their successors and assigns. By this agreement, any liability of insurers, predecessors, successors, officers, directors, agents, employees or former employees of the Town of East Troy for the Claims is released and discharged; provided, however, that the Hampels and Wardins, their successors and assigns, specifically reserve any and all Claims they have, or may have, against Patrick Hudec and/or Hudec Law Offices, S.C.

This Release fully extinguishes the Claims, including, but not limited to, those for: specific performance; compensatory damages; punitive damages; costs and fees; attorneys' fees; and statutory damage awards. It is understood this Release fully extinguishes the Claims, including known and unknown damages.

The Hampels and the Wardins agree to indemnify the Released Party for any money the Released Party may have to pay to any other person or entity arising out of the Claims, including claims based upon subrogation, derivation, or assignment. Also, the

Hampels and the Wardins will indemnify the Released Party for all expenses, including attorneys' fees, incurred in defending such claims.

The statements in this Release are contractual terms, and are not mere recitals. Any questions concerning this Release shall be determined and governed by the terms of this Release and by the laws of the State of Wisconsin.

I have read this Release, which consists of four (4) pages, and understand its terms, conditions and provisions.

Dated this 21st day of July, 2005.

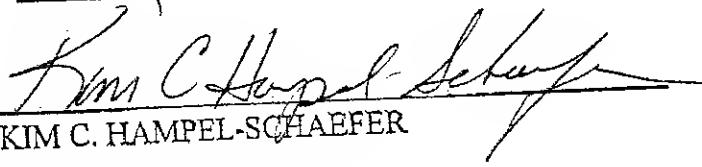
By: JAMES H. HAMPEL

Subscribed and sworn to before me this
21st day of December, 2005.

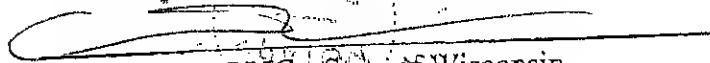
NOTARY PUBLIC - State of Wisconsin
My Commission: 10/20/2018

I have read this Release, which consists of four (4) pages, and understand its terms, conditions and provisions.

Dated this 21st day of July, 2005.


By: KIM C. HAMPEL-SCHAFFER

Subscribed and sworn to before me this
21st day of July, 2005.

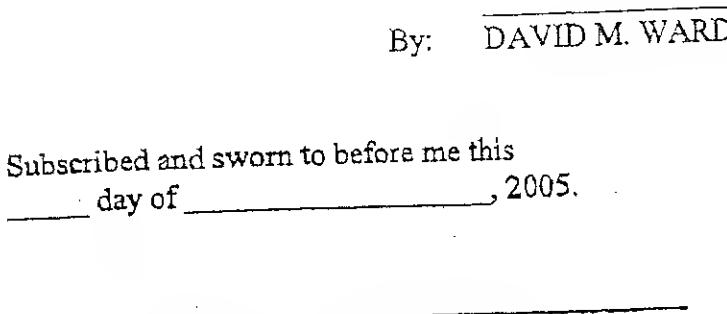

NOTARY PUBLIC - State of Wisconsin
My Commission: 1 year

I have read this Release, which consists of four (4) pages, and understand its terms, conditions and provisions.

Dated this _____ day of _____, 2005.

By: DAVID M. WARDIN

Subscribed and sworn to before me this
____ day of _____, 2005.


NOTARY PUBLIC - State of Wisconsin
My Commission: _____

I have read this Release, which consists of four (4) pages, and understand its terms, conditions and provisions.

Dated this _____ day of _____, 2005.

By: RHONDA A. WARDIN

Subscribed and sworn to before me this
____ day of _____, 2005.

NOTARY PUBLIC - State of Wisconsin
My Commission: _____

CONSENT OF ATTORNEY

As attorney for the Hampels and the Wardins, I have reviewed the terms of this settlement, and I consent to this settlement.

Dated this _____ day of _____, 2005.

By: ANTHONY A. COLETTI
State Bar No.: 01018646